

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 463 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE H.K.RATHOD**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - Whether this case involves a substantial question of law as to the interpretation of the
 - 4 constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)

Versus

KALIDAS CHUNILAL PATEL - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**Date : 31/01/2006****ORAL JUDGMENT**

1. Heard learned Advocate, Mr.H.S.Munshaw, appearing on behalf of petitioner and learned Advocate, Mr.J.S.Brahmbhatt, on behalf of respondent.

2. In the present petition, petitioner - Corporation has challenged the award passed by Industrial Tribunal, Baroda in Reference (IT) No.24 of 1999 dated 1st April,2003, wherein, Industrial Tribunal has modified the punishment from stoppage of five increments with cumulative effect to one year increment without cumulative effect. Learned Advocate, Mr.Munshaw, submitted that validity of departmental inquiry was not challenged by the workman before the Industrial Tribunal. The charge levelled against the workman was to be found on record that Rs.1/- received by the workman from passenger but, no ticket was issued to the passenger. Therefore, he misappropriated the amount of Rs.1/- and for that, charge-sheet was served to the workman and after completion of the departmental inquiry, he was punished by the competent authority imposing punishment by order dated 6th April,1998 of stoppage of five increments with cumulative effect. Mr.Munshaw submitted that passenger's statement was recorded on the spot and statement of conductor was also

recorded. The defence which was raised by the workman was not accepted by the passenger and, therefore, looking to the record of departmental inquiry, the allegations are proved against the workman. Therefore, Tribunal should not have interfered with the punishment. He also submitted that looking to the past record, about 49 defaults have been committed by the respondent - workman. That aspect has also not been examined by the Tribunal. Therefore, according to him, award passed by the Tribunal is required to be set aside.

3. Learned Advocate, Mr.J.S.Brahmbhatt, appearing for the respondent submitted that only one passenger was found without ticket and passenger has not paid the proper fare because of the fact that he was not having amount with him at the time when the bus was checked. He also submitted that workman has completed more than 22 years' service and bus was checked immediately at Maneja crossing. At the time of checking, one passenger from Makarpura to Maneja was found without ticket from whom workman has collected

Rs.1/- and rest amount of Rs.1/- is required to be recovered from the passenger. Therefore, according to Mr.Brahmbhatt, it is a minor lapse on the part of workman that since the passenger was not having cash amount and, therefore, the Tribunal has rightly modified the punishment and no interference is required while exercising the power under Article 227 of the Constitution of India.

4. I have considered the submissions made by both the learned Advocates. The facts on record are not much in dispute. It is a fact that one passenger was found without ticket for Rs.1/- which has been recovered by the workman from passenger and no ticket was issued to the concerned passenger. The question is that bus was checked at Maneja crossing which is near to Makarpura and there was some exchange of words between the passenger and conductor about the fare of the Maneja crossing and, therefore, conductor was not able to issue ticket and in meanwhile, the bus was checked by checking staff. The Tribunal has considered the fact that according to record, the

charge of misappropriation is not found to be proved but, negligence on the part of workman is proved. For that, punishment of stoppage of five increments with cumulative effect is too harsh and unjustified, which amounts to unfair labour practice on the part of petitioner - Corporation. Therefore, Tribunal has considered that looking to small irregularity committed by the workman, this punishment is harsh and unjustified and, therefore, Tribunal has modified the punishment instead of stoppage of five increments with cumulative effect and has imposed stoppage of one increment without cumulative effect. Therefore, according to my opinion, Tribunal has discussed evidence on record and also gave cogent reasons in support of its conclusion and looking to the allegations made against the workman and finding given by the Tribunal that it was merely a bona fide mistake on the part of respondent - workman not to issue the ticket after recovering fare of Rs.1/- and there was some exchange of words between passenger and conductor, and that is how the conductor was not able to issue ticket immediately after recovering

fare. Looking to this fact of minor lapse on the part of the workman, the punishment of stoppage of five increments with cumulative effect is found to be little harsh and unjustified. Therefore, according to my opinion, Tribunal has rightly modified the punishment. For that, Tribunal has not committed any error which require interference of this Court under Article 227 of the Constitution of India. Mr. Munshaw emphasized that past record / default card was produced by the Corporation before the Tribunal, wherein, 49 defaults are registered. That aspect has not been taken into account by the Tribunal. I have considered this submission. But, looking to the award, there is no submission made by Advocate of the petitioner before the Tribunal that in past, 49 defaults have been committed by the workman. Therefore, in absence of such submission, Tribunal has rightly not considered the past record of the workman. For that, Tribunal has not committed any error, which require interference while exercising the power under Article 227 of the Constitution of India. Mere production of past record is not enough.

It is necessary for the Corporation to prove it before the Tribunal by leading appropriate evidence. No such submission was made before Tribunal by the Corporation and, therefore, according to my opinion, Tribunal has not committed any error. Learned Advocate, Mr.Munshaw, is not able to point out any other infirmity in the award and not made any other submission except referred above. Therefore, considering the fact that Tribunal has rightly passed the award and modified the punishment, same requires no interference while exercising the powers under Article 227 of the Constitution of India. Accordingly, there is no substance in the present petition. Present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD, J.)

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